



POLICE DEPARTMENT

October 4, 2022

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In the Matter of the Charges and Specifications	:	Case No.
- against -	:	2021-23248
Police Officer Eduard Nogol	:	
Tax Registry No. 931851	:	
62nd Precinct	:	

-----X

At: Police Headquarters
One Police Plaza
New York, NY 10038

Before: Honorable Paul M. Gamble
Assistant Deputy Commissioner Trials

APPEARANCES:

For the Department:	Anna Krutaya, Esq. Department Advocate's Office One Police Plaza, Room 402 New York, NY 10038
For the Respondent:	John Tynan, Esq. Worth, Longworth & London, LLP 111 John Street, Suite 640 New York, NY 10038

To:

HONORABLE KEECHANT L. SEWELL
POLICE COMMISSIONER
ONE POLICE PLAZA
NEW YORK, NY 10038

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CHARGES AND SPECIFICATIONS

1. Said Police Officer Eduard Nogol, on or about March 4, 2021, while off-duty and within the confines of the 123rd Precinct, engaged in conduct prejudicial to the good order, efficiency, or discipline of the Department, to wit: said Police Officer Nogol wrongfully engaged in a verbal and physical altercation with Mrs. Nogol.

P.G. 203-10, Page 1, Paragraph 5

PUBLIC CONTACT--
PROHIBITED CONDUCT

2. Said Police Officer Eduard Nogol, on or about and between August 1, 2021, and April 30, 2022, while off-duty and within the confines of the 121st Precinct, engaged in conduct prejudicial to the good order, efficiency, or discipline of the Department, to wit: said Police Officer Nogol knowingly acted in a manner likely to be injurious to the physical, mental or moral welfare of a child known to the Department who is less than seventeen years old. *(As added)*

P.G. 203-10, Page 1, Paragraph 5

PUBLIC CONTACT- -
PROHIBITED CONDUCT

A.G. 304-06, Page 1, Paragraph 1

PROHIBITED CONDUCT

N.Y. Penal Law 210.60

ENDANGERING THE WELFARE
OF A CHILD

3. Said Police Officer Eduard Nogol, on or about and between August 1, 2021, and April 30, 2022, while off-duty and within the confines of the 121st Precinct, engaged in conduct prejudicial to the good order, efficiency, or discipline of the Department, to wit: said Police Officer Nogol knowingly acted in a manner likely to be injurious to the physical, mental or moral welfare of a child known to the Department who is less than seventeen years old. *(As added)*

P.G. 203-10, Page 1, Paragraph 5

PUBLIC CONTACT-
PROHIBITED CONDUCT

A.G. 304-06, Page 1, Paragraph 1

PROHIBITED CONDUCT

N.Y. Penal Law 210.60

ENDANGERING THE WELFARE
OF A CHILD

REPORT AND RECOMMENDATION

The above-named member of the Department appeared before me on August 24, 2022.

Respondent, through his counsel, entered pleas of Not Guilty to the subject charges. The

Department called Sergeant Ivan Acevedo as a witness; Respondent testified on his own behalf. A stenographic transcript of the trial record has been prepared and is available for the Police Commissioner's review. Having reviewed all of the evidence in this matter, the Tribunal finds Respondent Not Guilty of Specification 1; I further find Respondent Guilty of Specifications 2 and 3. I recommend a penalty of the forfeiture of 31 pre-trial suspension days, the additional forfeiture of ten vacation days, a 24-week counseling program, and one-year dismissal probation.

ANALYSIS

This case involves allegations of domestic abuse and child neglect. The following is a summary of the facts which are not in dispute.

On March 4, 2021, Respondent placed a call to 911, in which he stated his wife, Erin, was assaulting him.¹ (Dept. Exs. 2, 2A). In the background, Erin is heard yelling, "That is not true, my husband tried to assault me" (Dept. Ex. 2 at 00:45-00:51). When the 911 operator asked Respondent whether he was injured, he responded, "No, luckily I was able to vent [sic] injury" (Dept. Ex. 2 at 00:52-00:56). Respondent identified himself as a Member of Service and told the operator that Erin was attempting to leave the scene of the incident (*Id.*).

Police Officers Borik and Pascone responded to Respondent's home and found that he was the only person present on the premises² (Dept. Ex. 1). Upon entering the home, Respondent is seen holding a tissue to his left cheek; when he was asked how he was injured, Respondent explained that it was "from a scratch" (Dept. Ex 1, BWC 1 at 1:22). He informed the police officers that he and his wife had an argument, during which she became irate. Respondent stated that he attempted to leave the house, but was "cut off" by Erin before she left

¹ "Erin" is a pseudonym for Respondent's wife, whose identity is known to the Department.

² Each officer activated their Body Worn Camera at the scene.

for approximately an hour. After she returned, a struggle ensued, which began on the staircase and ended at the front door. Respondent then gestured to glass on the floor, asserting that his wife broke a candelabrum by knocking it down, and then threw one of its six-inch candles at him. He claimed that she grabbed the candleholder and dragged it across his face, causing the scratch. According to Respondent, Erin took the children and left the house (*Id.*, BWC 1 at 1:44 to 3:01).

Erin returned to the house approximately 17 minutes after Police Officers Borik, and Pascone arrived. Erin did not give a complete statement regarding the incident until Lieutenant Shtotland arrived on the scene, over one hour and ten minutes after the initial police response. She told Shtotland that as she was trying to leave home, Respondent pushed her, and she pushed him back. Erin demonstrated how Respondent pushed her onto a shoe rack and how she used her arm to push against him to get away; she also asserted that Respondent dumped water on her head. Erin claimed that as she removed her wet shirt, Respondent took undressed videos of her. She then collected her children and removed them from home (*Id.*, BWC 6 at 5:00 to 6:17).

Erin told Shtotland that all the markings on the stairs and the walls, as well as the broken door in the bedroom, resulted from Respondent's past angry outbursts. She explained that the house was not under construction, that Respondent punched holes in the walls, and that he pushed her during past arguments (*Id.*, BWC 6 at 6:34-7:48).

Borik was instructed to photograph the damage Erin claimed Respondent caused. She asserted that anywhere there was a white spot on the wall, Respondent caused the damage. Borik took photographs on all three levels of the home and in the children's bedroom (*Id.*, BWC 1 at 2:27:45- 2:34:30).

Erin and Respondent were then transported to their local precinct, where they each completed Domestic Incident Reports (Dept. Ex. 3; Resp. Ex. A). In her statement, Erin alleged that there was an argument that led to mutual shoving. She asserted that a candleholder fell and shattered when Respondent pushed her into a shoe rack. Erin also stated that Respondent dumped water on her, causing her to go upstairs to change her clothing. After she changed, Respondent called 911; Erin then left home with her children. Erin stated that she later returned to the house (Dept. Ex. 3).

Respondent also completed a Domestic Incident Report, claiming the argument began over home improvements. He indicated that he intended to leave home but that Erin departed before he could; he claimed Erin was away for approximately one hour. He packed a bag of clothing and meals, and then started walking down the stairs toward the front door. Respondent stated that Erin pushed past him on the staircase and grabbed his keys and wallet before he could, but was able to reach a spare set of keys. As he attempted to open the front door, Erin confronted him; due to an apparent struggle, a candlestick holder fell to the floor and broke. According to Respondent, Erin picked up the candle and threw it against the wall before picking up the broken candleholder. Respondent stated that as he attempted to take the candleholder from her hands, the candleholder lacerated his left cheek; he then called 911 (Resp. Ex. A).

The following is a summary of additional relevant evidence presented at trial.

Sergeant Ivan Acevedo of Patrol Borough Brooklyn South Investigations testified that approximately two months following the initial incident, Respondent's children, Elsa and Ana³ made claims to their therapist that Respondent was physically abusing them. A forensically trained interviewer from Safe Horizon interviewed Elsa and Ana on May 11, 2022, at a Child

³ "Elsa" and "Ana" are pseudonyms for Respondent's 11-year old and 7-year old children, whose identities are known to the Department.

Advocacy Center. The children were each aware of cameras in the room, and other multi-disciplinary team members were observing the interview from another space; Sergeant Acevedo was one of the observers. Both children asserted that they understood the rules of the discussion, including acknowledging the difference between a truth and a lie.

Respondent's children said they would go to Respondent's home on Thursday afternoons and remain until Saturday evening. When asked what it was like when her parents still lived together, Elsa described it as "chaotic" (Dept. Ex. 4 at 10:37-10:40).

Both children spoke about an incident that occurred during spring break while they were staying with Respondent. Elsa stated that she accidentally spilled a glass of red wine on a white carpet in the house. She said that Respondent hit her for spilling it, believing she did it "out of spite." Elsa described how Respondent struck her with an open palm on her upper thighs and arms (Dept. Ex. 4 at 13:05-14:05). Ana corroborated this statement when she told the interviewer Respondent got "real, real mad and started hitting Elsa on her face, on her legs, and her arms" for "spilling something on grandma's white carpet" (Dept. Ex. 5 at 8:44-9:53).

During her interview, Elsa described visits with Respondent as "pretty scary" and that he "hits [her] sometimes there, but not always" (Dept. Ex. 4 at 12:38-12:50). She said that he cursed at her often, calling her a "little shit" or saying things such as "bitch, go to your room" and "fuck you, go to your room" (*Id.* at 15:58-16:40).

During her interview, Ana stated that she had a different experience with Respondent because he did not slap her, but he did the "wrist thing" (Dept. Ex. 5 at 10:42-10:48). She explained, "he bends [her wrist] so far it hurts, and he slaps it with his hand." She could not remember precisely when this occurred but recalled that it was sometime in March while she was cleaning her room with Elsa. According to Ana, he became angry because she put something in

the wrong place. She stated that Respondent was “cursing, bent my wrist, and left the room.” (Dept. Ex. 5 at 11:00-13:11). Ana told the interviewer that visiting her dad was “fun, but [she] doesn’t like it when he hurts us” (Dept. Ex. 5 at 18:57-19:18).

Respondent’s Testimony

Respondent testified that he was married to Erin from September 2009 until March 2022, when the marriage was dissolved (T. 91-92). The couple owned a home during the marriage, but it went into foreclosure in 2018 (T. 93).

According to Respondent, on March 4, 2021, Erin informed him that she intended to make a large purchase that he believed was beyond their current means. When Respondent shared this opinion, she became upset and stated that she would go forward with the purchase despite his objection (T. 95-96). He replied that he was not going to have that conversation with her and prepared to leave their home (T. 97). As he descended the staircase, which led from the second floor to the first floor, Erin pushed past him, and they both rolled down the stairs together (T. 98). When Erin reached the bottom of the staircase, she got up and took possession of Respondent’s car keys and wallet (*Id.*). Respondent then reached for the second set of keys, which were hanging from a hook on the front door, and attempted to put the key in the lock; Erin pushed him against the door while placing her hand over the lock, preventing him from unlocking it (T. 98-99). Erin then dropped Respondent’s primary keys to the floor, which he retrieved; as Respondent attempted again to open the door, Erin threw her weight against it and knocked over a shoe cabinet in the process, which caused a candleholder to fall and its glass to shatter (T. 100). According to Respondent, Erin picked up the candleholder, which at that point bore broken shards of glass, and advanced toward him (*Id.*). He testified that he grabbed the candleholder with both hands, preventing her from thrusting it at him (T. 100-101).

Respondent testified that Erin then dropped the candleholder and looked for another object; he took a bottle of water and splashed some on her, saying, “Enough” (T. 101). Erin went upstairs, and Respondent called 911 (*Id.*). As he was on the call with the 911 operator, Erin screamed at him before she packed a bag and left home with their children (T. 102).

Respondent testified further that in August 2021, he learned that the Administration for Children’s Services (“ACS”) had commenced an investigation into an allegation that he had mistreated his children (T. 107). He admitted striking his daughter Elsa but explained that it was in a disciplinary context (T. 108). According to Respondent, on one occasion, he slapped her with an open hand on her arm after she was roughhousing with her sister and spilled a glass of wine (T. 108-10). He denied ever pinching Elsa or striking either of his daughters because he was upset with Erin (T. 111). Respondent explained that his usual means of discipline was sending them to their rooms or confiscating their electronics (*Id.*).

I have evaluated Erin’s hearsay statements, both written and recorded. As set forth in detail below, I find them unreliable.

I have also evaluated Respondent’s testimony. He is an interested witness in this proceeding, arguably giving him an incentive to color his description of the relevant events in his favor. As outlined in detail below, I find his testimony regarding his altercation with Erin on March 4, 2021, more credible than her hearsay statements. In contrast, I find his testimony regarding his treatment of Elsa and Ana less reliable than their hearsay statements.

The Tribunal recognizes the unique challenge of assessing the credibility of an 11-year old and a 7-year old. Uncertainty or inconsistent trial testimony from a child would not automatically preclude the Tribunal from finding the child to be a competent witness. The test of

a child's competency as a witness is always an individual one (*see generally* Prince, Richardson on Evidence § 6-106, at 314-315 [Farrell 11th ed.]).

I credit the statements of Elsa and Ana based on the totality of the circumstances under which they provided them. I have reviewed the video recordings of their interviews and find their demeanor consistent with that of minors responding to non-leading questions posed by an adult in a non-threatening environment rather than the result of suggestive questioning. Each statement was facially plausible and generally corroborative of the other.

Specification 1: Engaging in a Verbal and Physical Altercation

I find that the Department Advocate has failed to meet her burden of proof by a preponderance of the relevant, credible evidence that Respondent wrongfully engaged in a verbal and physical dispute with Mrs. Nogol.

While this Tribunal has previously found that statements made during 911 calls may qualify as exceptions to the hearsay rule if they meet the requirements of an excited utterance, Erin's videotaped statement does not appear to fit within this exception.

First, Erin was not the 911 caller: Respondent was. Second, while Erin's voice is audible on the 911 call, she only asserts that she did not assault Respondent and that he assaulted her without more. This statement is more like a denial rather than an assertion of fact. It is noteworthy that Erin then left the premises rather than waiting for the police to arrive. Third, her statement, captured on Shtotland's BWC, was made approximately one hour later, after she returned to the residence. I have reviewed the video recording of this statement, and Erin's demeanor does not appear consistent with someone speaking to the police while still under the influence of a startling event. Accordingly, I find it more likely that by the time Erin spoke with Shtotland, she was providing her self-interested version of the events rather than a spontaneous

utterance that she made without the opportunity for reflection.

Erin's second statement, recorded and sworn to in her DIR, contains some of the same assertions she made in her statement to Shtotland, but there are some significant discrepancies. In her video statement to Shtotland, Erin claimed that Respondent attempted to videotape her as she was changing out of her wet clothing, yet she did not make the same assertion in the DIR. If true, an attempt to record a purported victim of domestic violence immediately after an incident could be probative evidence of an alleged abuser's state of mind. It is significant, therefore, that Erin did not include it in her sworn DIR statement, made several hours after the incident, where she would have had an opportunity to collect her thoughts in an environment where she would not have to fear her alleged assailant's reaction to a candid description of the purported assault. In her video statement, Erin also alleged that evidence of apparent damage to the walls in her home was also evidence of previous abusive behavior by Respondent; Erin omitted this assertion from her sworn DIR statement.

While this Tribunal understands that, given the vagaries of human memory, any witness might forget specific details of an event as time passes, these are significant omissions that raise serious questions of law and fact. The period from the alleged event, to Erin's videotaped statement, to her sworn statement in the DIR was not significant enough to explain the differences in her narrative; therefore, I find her statements unreliable.

In contrast, the factual assertions contained in Respondent's testimony, his Domestic Incident Report Statement, and his statements to responding officers at the scene are essentially consistent. They appear to be plausible and logical, even given Respondent's self-interest.

Based on the preceding analysis, I find Respondent Not Guilty of Specification 1.

Specifications 2 and 3: Endangering the Welfare of a Child⁴

I find that the Department Advocate has met her burden of proof by a preponderance of the relevant, credible evidence that Respondent wrongfully engaged in conduct prejudicial to the good order, efficiency, or discipline of the Department, in that he knowingly acted in a manner likely to be injurious to the physical, mental or moral welfare of Elsa and Ana, children who are less than seventeen years old.

Elsa and Ana were interviewed during an investigation into child abuse allegations against Respondent. I find that Elsa and Ana's hearsay statements concerning their opinion about Respondent and an incident from spring break are reliable and a sufficient basis upon which to make findings of fact.

Both girls were interviewed separately by an interviewer trained in forensic interviewing, which is used to minimize any suggestiveness from the questioner. In the view of the Tribunal, Elsa and Ana clearly understood the difference between the truth and a lie. Both girls spoke very highly of their mother and their experiences with her, but when the topic shifted to their father, their demeanors changed. When Ana was asked if there was something she did not like about her dad, after being asked the same question about her mom, she told the interviewer she did not like it when he hits her sister (Dep't Ex. 5 at 8:20-8:23). At the end of the interview, she candidly told the interviewer that she enjoyed going to her dad's house, but "not when he hurts us." (*Id.* at 18:57-19:18) Elsa described the visits with Respondent as "pretty scary." As the eldest, she recalls living with Respondent and her mother in the same home before the divorce and called it "chaotic."

Ana and Elsa spoke of the same incident that occurred over spring break where

⁴ While these specifications are identical, since there are two children involved in this proceeding, it is the Tribunal's understanding that each specification alleges misconduct against one child.

Respondent hit Elsa, and Ana observed that happen. This Tribunal finds the statements regarding this incident credible and that this incident meets the burden to prove the specifications by a preponderance of the evidence.

Both girls were forthcoming about their experiences with Respondent. While neither Elsa nor Ana had visible bruising or marks, the emotional and past physical trauma they endured were apparent during these interviews.

While it would have been illuminating to have Elsa and Ana testify at trial and observe their demeanor, the Tribunal could observe the girls' demeanor as captured by the forensic interview recording. Taking into account all of the surrounding circumstances, I find each statement to be credible on its face.

I do not credit Respondent's denials of Elsa and Ana's allegations, and I find them to lack sufficient specificity to call into question their otherwise credible statements.

Based upon the preceding, I find Respondent Guilty of Specifications 2 and 3.

PENALTY

In order to determine an appropriate penalty, this Tribunal, guided by the Department's Disciplinary System Penalty Guidelines, considered all relevant facts and circumstances, including potential aggravating and mitigating factors established in the record. Respondent's employment history also was examined (*See* 38 RCNY § 15-07). Information from his personnel record that was considered in making this penalty recommendation is contained in an attached memorandum.

Respondent, who was appointed to the Department on July 22, 2002, has been found guilty of two specifications of endangering the welfare of a minor, including physical and verbal components. The Department Advocate has recommended that Respondent be dismissed from

the Department. As I have found Respondent Not Guilty of the most serious allegation of domestic violence, a lesser penalty is warranted. Still, the findings of guilt regarding his treatment of his minor children give me pause.

The presumptive penalty for a physical act of domestic violence/family offense is 30 suspension days, dismissal probation, and other conditions. While the Disciplinary Guidelines authorize the imposition of the presumptive penalty for each of the two counts of which Respondent has been found Guilty, I believe that imposing consecutive penalties would overstate Respondent's misconduct. Conversely, I believe running the penalties concurrently is inappropriate because there are two distinct victims.

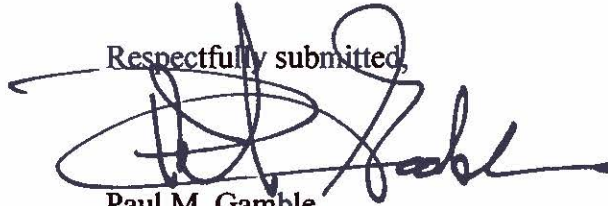
The manner in which Respondent administered corporal punishment and the abusive language he directed toward his young children are disturbing. I note that the periods before and after the dissolution of a marriage can be emotionally fraught, especially when minor children are involved. I am also concerned that the pressures of the transition from full-time parenting with another parent in the same household to a part-time parent where custody of the children is shared may eventually have a negative impact on their dynamic.

While Members of Service voluntarily agree to be held to a higher standard of on and off-duty conduct, the vicissitudes of life can make it difficult to keep faith with that commitment. Accordingly, for the benefit of Respondent, his family, and this Department, a period of monitoring, during which he receives supportive family counseling, is appropriate.

I, therefore, recommend that Respondent be DISMISSED from the New York City Police Department but that his dismissal be held in abeyance for one year, pursuant to Administrative Code § 14-115(d), during which time he is to remain on the force at the Police Commissioner's discretion and may be terminated at any time without further proceedings. As a condition of the

period mentioned above of monitoring, I recommend that Respondent participate in a 24-week counseling program. I further recommend that Respondent forfeit 31 pre-trial suspension days previously served. Finally, I recommend that Respondent forfeit an additional five (5) vacation days for each of the two specifications of which he has been found Guilty, to be served consecutively, for a total of 41 penalty days.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Paul M. Gamble', written over the typed name.

Paul M. Gamble
Assistant Deputy Commissioner Trials

APPROVED

A handwritten signature in black ink, appearing to read 'Keechant L. Sewell', written over the date and typed name.

APR 13 2023
KEECHANT L. SEWELL
POLICE COMMISSIONER



POLICE DEPARTMENT CITY OF NEW YORK

From: Assistant Deputy Commissioner – Trials

To: Police Commissioner

Subject: SUMMARY OF EMPLOYMENT RECORD
POLICE OFFICER EDUARD NOGOL
TAX REGISTRY NO. 931851
DISCIPLINARY CASE NO. 2021-23248

Respondent was appointed to the Department on July 22, 2002. On his three most recent annual performance evaluations, he was rated “Exceptional” for 2019, 2020, and 2021. He has been awarded one Commendation, ten medals for Excellent Police Duty, and three medals for Meritorious Police Duty.

Respondent has no formal disciplinary history. In connection with the instant matter, he was suspended without pay from March 5, 2021, to April 4, 2021, and placed on Level 1 Discipline Monitoring in April 2022. Monitoring remains ongoing

For your consideration.

Paul M. Gamble
Assistant Deputy Commissioner Trials